

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TERRY DAUM,

Plaintiff,

- v -

Civ. No. 9:15-CV-1083
(DNH/DJS)

DEVLIN, *et. al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

TERRY DAUM
Plaintiff, *Pro Se*
97-A-1295
Auburn Correctional Facility
P.O. Box 618
Auburn, New York 13021

HON. LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants
The Capitol
Albany, New York 12224

THOMAS A. CULLEN, ESQ.
Assistant Attorney General

DANIEL J. STEWART
United States Magistrate Judge

ORDER

Plaintiff's claims for sexual assault and failure to intervene against Defendants Devlin, Stickney, and Cross were dismissed on initial review under 28 U.S.C. §§ 1915(e) & 1915A. Dkt. No. 7 at pp. 9-11 & 13. Other claims proceeded against these individuals, with the matter ultimately proceeding to trial at which a verdict for Defendants was reached. *See*

Dkt. Nos. 173 & 174. Plaintiff appealed and the Second Circuit vacated the District Court's Order dismissing those claims upon initial review and remanded the matter. Dkt. No. 191.

Combined, sections 1915(e) and 1915A require the District Court to conduct an initial review of prisoner, *in forma pauperis* complaints to assess whether they state a plausible cause of action. *See, e.g., Bussie v. Boehner*, 21 F. Supp. 3d 244, 245 (E.D.N.Y. 2014). Given that the prior initial review order has been vacated, this Court must conduct a new review. In light of the Second Circuit's conclusion that the sexual assault claim "permit[s] a plausible inference" that the alleged assault lacked any penological purpose, Dkt. No. 191 at p. 4, the Court concludes that Defendants must respond to that claim and the related failure to intervene claim.

ACCORDINGLY, it is hereby

ORDERED, that Defendants shall answer or otherwise move with respect to those allegations in the Complaint on or before August 31, 2023; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order upon the parties to this action.

Dated: July 24, 2023
Albany, New York



Daniel J. Stewart
U.S. Magistrate Judge